

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-346-WS - ORDER NO. 2018-346

MAY 16, 2018

IN RE:	Application of Daufuskie Island Utility)	ORDER DENYING
	Company, Inc. for Approval of an Increase)	RECONSIDERATION
	for Water and Sewer Rates, Terms and)	
	Conditions)	

I. Introduction

This matter comes before the Public Service Commission of South Carolina (“the Commission”) on the Petition for Reconsideration of Order No. 2018-68 (“the Order on Rehearing”) filed by Daufuskie Island Utility Company, Inc. (“DIUC” or “the Company”). The Company asserts that three areas in the Order are appropriate for reconsideration: rate base/utility plant in service, accumulated depreciation/depreciation expense, and rate case expense. DIUC asserts that this Commission’s disallowance of specifically identified used and useful assets in rate base/utility plant in service, its disallowance of certain expenses in accumulated depreciation/depreciation expense, and its disallowance of significant rate case expenses are not based upon the reliable, probative, and substantial evidence in the record. Additionally, the Company argues that the Commission’s rulings are contrary to evidence and result in a punitive impact upon DIUC.

The Company requests that the Commission reconsider its Order on Rehearing and substitute DIUC’s Proposed Order on Remand to replace the Commission’s Order on Rehearing in its entirety. As an alternative, DIUC states that the Commission should revise

its Order on Rehearing to adjust the rate base for the disallowed assets and corrected accumulated depreciation, and adjust depreciation expense and a sufficient portion of the disputed rate case expenses in order to achieve DIUC's original 108.9% rate increase. This Commission has considered these matters in the written arguments of the Company, the Office of Regulatory Staff ("ORS"), and the three Intervenor Property Owner's Associations: Haig Point Club and Community Association, Inc., Melrose Property Owner's Association, Inc., and Bloody Point Property Owner's Association (together, "the POAs"), and has concluded that the Company's Petition for Reconsideration is without merit and should be denied in its entirety. Each area of concern raised by DIUC is discussed below.

II. Rate Base/Utility Plant in Service

DIUC argues that the Commission's exclusion of \$699,361 (out of a total of \$8,139,260) in gross plant from rate base is erroneous and repeats the same error that resulted in appeal of Order No. 2015-846. This is not the case. Order No. 2015-846 excluded an "elevated tank site" from rate base, based on an ORS recommendation after ORS concluded that the "site" should not be included in rate base, since it sat on land that had been sold in a delinquent tax sale, and it could not be conclusively established that the elevated tank was not sold in the tax sale along with the land. DIUC appealed this exclusion to the South Carolina Supreme Court, which opined that the "elevated tank site" should have been included in rate base, based on the testimony of the Treasurer of Beaufort County at the original Commission hearing. The Supreme Court remanded the matter back to the Commission. In conformity with the Supreme Court's opinion, ORS proposed to add the

“elevated tank site” back into rate base. *See Daufuskie Island Utility Company, Inc. v. South Carolina Office of Regulatory Staff*, 420 S.C. 305, 317, 803 S.E. 2d 280, 286 (2017) and *Order No. 2018-68 at 21*. This Commission then adopted the position of the ORS on remand in *Order No. 2018-68. Order No. 2018-68 at 26*.

With the “elevated tank site” now placed back into rate base, this Commission’s *Order No. 2018-68* included in rate base all but \$699,361 of the total rate base amount of \$8,139,260 claimed by the Company. According to ORS testimony, this amount should be excluded from rate base, because the Company lacked invoices or any other means to show the value of these assets, which were included by plant account in an ORS exhibit (Exhibit DFS-5, Hearing Exhibit 8). These assets were thus deemed “unallowable” by ORS. The Commission adopted this position in the *Order on Rehearing*, which is now disputed by DIUC. Although the issue of excludable rate base is related to the question in the appeal of *Order No. 2015-846*, the issue in the present case is the amount of the rate base after the “elevated tank site” was added back into rate base. *Order No. 2018-68 at 26*. The issue in the appealed *Order No. 2015-846* was the exclusion of the actual “elevated tank site” from rate base.

The first argument against the Commission’s holding in the present case is that the exhibits furnished by ORS in the rehearing matter do not identify the excludable items of plant, but only plant accounts that cannot be matched with specific items. The Company therefore asserts that such evidence was not the required probative evidence to support the ORS position, or the Commission’s conclusion to exclude plant. The *Order on Rehearing* cited specific testimony from ORS auditors, which established that the amount proposed

for exclusion was derived after adding the elevated tank site and related facilities to the account for plant in service as discussed by the Supreme Court's opinion, and established that the Company failed to present evidence supporting the value of the remaining excluded plant in service by invoices or other probative evidence. Actually, the Company's own witness furnished information that enabled the Company to identify specifics of the various items considered in plant-in-service at issue, along with categories of such plant. Specifically, in the original case, witness Guastella, on page 5 of his rebuttal testimony, stated that ORS had provided DIUC with work papers as a follow up to the audit exit conference call that enabled the Company to identify what it believes are the specifics of the ORS adjustments. (Hearing Tr. p. 202). Thus, the Company's position that the excluded plant cannot be specifically identified by item is incorrect.

With regard to ORS testimony provided to the Commission, ORS witness Gearhart testified that ORS's review of the Company's rate base consisted of three steps: 1) verifying that the Company's rate base, reported by DIUC in its Application, was supported by DIUC's accounting books and records for the twelve months ending December 31, 2014 (the "test year"); 2) testing the underlying transactions in the books and records for the test year to ensure the underlying transactions in the books and records were adequately supported, had a stated business purpose, were allowable for ratemaking purposes, and were properly recorded, and 3) making necessary adjustments to revenues, expenditures, and capital investments to normalize the Company's operating experience and rate base, in accordance with generally accepted regulatory principles and prior Commission orders. (Hearing Tr. p. 489, ll. 15-22) ORS witness Sullivan testified that upon ORS review of the

Supreme Court decision in this case, which is Opinion No. 27729, ORS determined that it should recommend adjustments to plant-in-service. (Rehearing Tr. p. 235, ll. 11-12). ORS witness Sullivan testified during the rehearing that:

[b]ased on guidance from [the Opinion], ORS proposes to adjust gross plant in service to include the water tank and well located on the elevated tank site. In Docket No. 2011-229-WS, ORS removed \$863,379 from plant in service for the elevated water storage tank and \$61,956 for a well located on the elevated tank site due to ownership disputes....The ORS adjustment to plant in service on Audit Exhibit ICG-4 was (\$1,624,696). Based on the Supreme Court guidance, ORS now computes an adjustment to gross plant in service of (\$699,361), which is shown on Revised Rehearing Audit Exhibit DFS-5. Audit Exhibit ICG-5 showed the adjusted water total for reservoirs and standpipes at \$34,700. Revised Rehearing Audit Exhibit DFS-5 includes elevated water storage tank amount of \$863,379, and shows the adjusted water total for wells as \$732,908. Revised Rehearing Audit Exhibit DFS-5 includes the \$61,956 for the well removed in Docket No. 2011-229-WS and shows the adjusted water total for wells as \$794,864. Revised Rehearing Audit Exhibit DFS-5 reflects all other adjustments to plant-in-service included on Audit Exhibit ICG-5.

(Rehearing Tr. p. 451, ll. 12-23, p. 452, ll. 1-4).

Rehearing Exhibit 8, prepared by ORS witness Sullivan, specifically itemizes the amounts and corresponding plant. As the result of the testimony and exhibits presented by ORS witnesses, there is sufficient evidence to support ORS's recommended adjustment of \$699,361, and, further, to support the Commission's Order.

According to ORS witness Gearhart, the purpose of her audit review was to test the underlying transactions that are recorded on the books. (Hearing Tr. p. 489, ll. 7-17.) When a booked item cannot be verified based on the information provided by an applicant utility, the ORS auditor must recommend an adjustment corresponding to the undocumented expense. The ORS auditor did so in this case in recommending the exclusion of the \$699,361, because of a lack of documentation.

DIUC argues that even though it may have lacked the invoices to support the figures for plant-in-service on its books, the Company's books are the best estimate of the value of the assets, and, further, the NARUC Uniform System of Accounts states that estimates may be used to establish the value of assets when other sources, such as invoices, are lacking. Although estimates may be allowable under certain circumstances, the NARUC Uniform System of Accounts for both water and wastewater companies requires that property records be maintained by the utility. Lacking such documentation, ORS properly excluded the \$699,361 in plant-in-service.

Although the Company argued that, despite the absence of verifiable property records, ORS should have accepted the Company's own estimates of the values, the Commission cannot accept estimates in regard to the Rate Base items in question without proper documentation of relevant, sufficient, and reliable data on which to decide the Company's revenue requirements. The Company has not established a process for preparing accounting estimates that can be audited by an independent third party, such as the ORS. Therefore, the Company must provide proper documentation for such items in future proceedings, if it seeks approval of them. Such documentation can be provided by various sources, such as obtaining duplicate invoices from vendors, presenting cancelled checks as proof of payment, obtaining copies of cancelled checks from banking institutions when necessary, supplying copies of paid contracts, and/or obtaining independent third party estimates for questioned items. Meanwhile, however, the Company's position must be rejected.

In this case, the burden of proof clearly rests with the Company, not ORS, and the Company was not able to satisfy that burden with figures in its books derived from unknown sources, regardless of the possible used and usefulness of the assets. Although a water utility is entitled to a presumption in a proceeding on application for rate increase that its expenditures were reasonable and incurred in good faith, such a presumption does not foreclose scrutiny by the Public Service Commission, and, thus, the utility had the burden of proving the reasonableness of such expenditures after the Commission's investigation yielded evidence that such expenditures were not reasonable. *See Utilities Services of South Carolina, Inc. v. South Carolina Office of Regulatory Staff*, 392 S.C. 96, 708 S.E. 2d 755 (2011). The evidence presented by ORS supports this Commission's conclusion with regard to the unreasonableness and exclusion of the plant in service items, because of lack of documentation by the Company. Further, for similar reasons, the evidence presented by ORS supports the adjustment made for capital costs and legal costs associated with plant in service, which we adopted in Order No. 2018-68, and, Company allegations to the contrary, must also be rejected. These are the "Land and Land Rights" shown in Exhibit DFS-5, Hearing Exhibit 8.

The Company's position on the appropriate Rate Base/Plant in Service must be rejected by this Commission. The Commission will certainly consider any new supporting evidence regarding this category in future rate proceedings.

III. Accumulated Depreciation and Depreciation Expense

With regard to DIUC's allegations regarding accumulated depreciation and depreciation expense, it is clear that ORS updated these "fall out" adjustments and

presented them during the rehearing of this case. DIUC simply says that it disagrees with the Commission's decision, which adopted the ORS testimony and evidence on these points. A simple "disagreement" from DIUC does not demonstrate that the Commission's decision adopting the ORS position was in error. A finding upon which reasonable people may differ will not be set aside. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E. 2d 304 (1981). As ORS witness Sullivan pointed out, ORS has consistently challenged the books of the Company, specifically with regard to plant-in-service figures, since at least Docket No. 2011-229-WS, due to non-allowable plant and adjustments made by ORS in previous cases that have not been made by the Company. Rehearing Tr. p. 460. As such, DIUC and ORS offered differing views on depreciation expense and accumulated depreciation, and the Commission decided that the ORS view was the appropriate view. The Commission's decision to choose the ORS evidence over DIUC's does not rise to reversible error.

Further, according to ORS witness Sullivan,

...through discovery, DIUC submitted invoices to support additional rate case expense that had been incurred since the original October 20, 2015 Commission hearing. Based on a review of the invoices provided by the Company, ORS updated total rate case expenses and the amortization of rate case expenses. ORS also updated all "fall out" adjustments, such as depreciation expense, accumulated depreciation... ORS prepared Rehearing Audit Exhibits DFS-1 through DFS-8 based on these changes and using the Company's proposed increase in its rehearing testimony and exhibits.

(Tr. p. 444, ll. 13-22).

Fall-out adjustments depend upon other adjustments for their determination. Therefore, pursuant to DIUC's interpretation of the Court's Order, and the Court's Order itself, any new fall-out adjustment would only occur in the rehearing to the extent it, or an adjustment upstream, was required by the Court's guidance or new evidence dealing with

the expenses of an appeal is presented by DIUC. ORS followed the guidance given by the Supreme Court and provided evidence to that effect. Again a mere conflict between two sets of evidence does not prove that one set does not have weight. Rather, the Commission acts as the trier of fact, weighs the evidence before it, and makes its determination. *See Southern Bell Tel. & Tel. Co. v. Public Service Commission*, 270 S.C. 590, 244 S.E. 2d 278 (1978). The Commission appropriately weighed the evidence and relied on substantial evidence in making its decision to accept the ORS recommended accumulated depreciation and depreciation expense.

DIUC asserts that the rehearing testimony of Gary White was definitive, and that Mr. Sullivan's testimony was flawed since, among other things, Mr. Sullivan's depreciation schedules were in conflict with DIUC's book figures, and did not recognize any known and measurable changes after December 31, 2014. There is a good reason for the conflict between the Company's book figures and ORS schedules, since ORS has disagreed with DIUC's book figures for several years, going back to at least Docket No. 2011-229-WS according to ORS witness Sullivan. With regard to Sullivan not recognizing any changes after December 31, 2014, that date marks the end of the test year period for the case, so it is reasonable for ORS to limit known and measurable changes to before December 31, 2014. Again, the Commission had the ability to choose one of two positions, and it chose the position accompanying the assertions of ORS. No reconsideration of the Commission Order is necessary, or reasonable, under the circumstances.

IV. Rate Case Expenses

In the rehearing phase of this Docket, DIUC requested “\$794,210 for current and unamortized rate case expenses recovered over 3 years”. Order on Rehearing at p. 36, citing to Rehearing Tr. p. 473, ll. 15-17. ORS recommended a rate case expense total of \$272,382 to be amortized over 5 years, adjusting the \$794,210 amount sought by DIUC to remove \$542,978 in invoices submitted by Guastella and Associates and other uncontested items. Order on Rehearing at pp. 36-37. The Order on Rehearing adopted the shorter amortization of rate case expenses proposed by DIUC (3 years instead of 5 years), but agreed with ORS that those particular invoices must be excluded (Order on Rehearing at p. 39). Clearly DIUC bears the burden of proof to justify those expenses that contribute to its revenue requirement. This Commission recognized in our Order on Rehearing that ORS witness Hipp completed a thorough review of all invoices from Guastella Associates, and found that they “contained mathematical errors, lacked sufficient detail, and/or did not appear to be paid.” Rehearing Tr. p. 476, ll. 11-18. In addition, the accuracy of the Company’s claimed rate case expenses is questionable due to attempts to recover duplicate charges already paid out pursuant to the South Carolina Supreme Court’s previous ruling regarding reimbursement of appeal costs. Rehearing Tr. p. 475, l. 21 through p. 476, l. 10.

Further, DIUC’s claim that it was not afforded an opportunity to rebut the ORS recommendation to exclude the Guastella and Associates invoices is erroneous. Petition for Reconsideration, pp. 12-14. DIUC witness Guastella addressed the issue in his Rebuttal Testimony, in response to Direct Testimony of ORS witness Hipp, and the issue was discussed at some length during the Rehearing. Ms. Hipp testified further in her Surrebuttal

Testimony about the inadequacies of the invoices, which were discussed further at the rehearing. Rehearing Tr. 480-492. Clearly, all prefiled testimony in the hearing on this issue was served on DIUC in advance of the hearing, including that of ORS witness Hipp. This should have provided ample time for the Company to examine the testimony and prepare for the hearing.

Further, the DIUC assertion that the Commission “should have considered the rate case expense issues on remand based on the Supreme Court’s ruling that the previous rate case expense adjustment was ‘entirely unsupported by the evidence presented to the Commission [at the original hearing]’” simply misses the point. Clearly, the Commission heard additional evidence on this topic at the rehearing on this matter pursuant to the Court’s direction to hold a hearing *de novo*, and made an appropriate ruling based on evidence presented at the rehearing. In essence, the Commission followed the directions provided by the Supreme Court, and issued its ruling based on evidentiary support provided at the rehearing by ORS when it excluded the \$542,978 in rate case expenses. Further, the burden was on the Company to present evidence on the remaining portion of rate case expenses. No such credible evidence was presented at the rehearing.

DIUC’s citation to *Utilities Services of S.C., Inc. v. S.C. Off. Of Reg. Staff* case, found at 392 SC. 96, 708 S.E. 2d 755 (2011) is unavailing, as the facts in the present case are dissimilar to those that existed in *Utilities Services*. Although DIUC failed to meet its burden regarding sufficiency of evidence in this case, the Commission has made it clear that the Company is not foreclosed from providing supporting evidence on this issue that satisfy the criteria listed by ORS witness Hipp presented at the rehearing in its next rate

case. Order on Rehearing at p. 39. Accordingly, this allegation of error in the Order on Rehearing is without any substantial basis, and must be rejected.

V. Annual Revenues

In its filing on February 4, 2018, DIUC noted that, pursuant to the provisions of Order No. 2018-68, it is collecting \$955,136 in additional annual revenue, rather than the \$950,166 in additional annual revenue approved by that Order. The Company shall make appropriate adjustments to cease the collection of the annual revenue which exceeds the authorized level of \$950,166.

VI. Conclusion and Order

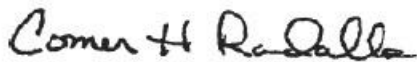
Based on the reasoning stated above, the Petition for Reconsideration filed by DIUC is hereby denied. Further, DIUC shall cease collection of annual revenues over the authorized level of \$950,166.

BY ORDER OF THE COMMISSION:



Swain E. Whitfield, Chairman

ATTEST:



Comer H. Randall, Vice Chairman